

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

J. EZRA MERKIN, et al.

Defendants.

SIPA LIQUIDATION

No. 08-01789 (BRL)

Adv. Pro. No. 09-1182 (BRL)

**Refers to ECF Nos.
160, 165, 168, 182, and 212**

**NOTICE OF SETTLEMENT OF ORDER GRANTING
IN PART AND DENYING IN PART DEFENDANTS'
MOTIONS TO DISMISS THE THIRD AMENDED COMPLAINT**

PLEASE TAKE NOTICE that, pursuant to Rule 9074-1 of the Local Rules of Bankruptcy Procedure for the Southern District of New York, the proposed order, a copy of which is annexed hereto, granting in part and denying in part the motions of defendant J. Ezra Merkin; Bart M. Schwartz, as Receiver of defendants Ariel Fund Limited and Gabriel Capital, L.P.; and Ralph Dawson, as Receiver of defendant Ascot Partners, L.P.; and defendant Ascot Partner, L.P. (collectively, the "Defendants") to dismiss the Third Amended Complaint of Irving H. Picard, as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC, dated August 30, 2013, will be presented for settlement and entry to the Honorable Stuart M. Bernstein, at Room 723 of the United States Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York

10004 (the “Court”) on September 2, 2014.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed order must be made in writing and received by the Bankruptcy Judge’s chambers and by the undersigned not later than 11:30 a.m on August 29, 2014. The ECF docket number to which the filing relates shall be included in the upper right hand corner of the caption of all objections. Unless an objection is received by that time, the proposed order annexed hereto may be entered by the Court.

Dated: August 26, 2014
New York, New York

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| In re: BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor. | SIPA LIQUIDATION No. 08-01789 (BRL) |
| IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. J. EZRA MERKIN, et al. Defendants. | Adv. Pro. No. 09-1182 (BRL) |

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTIONS TO DISMISS THE THIRD AMENDED COMPLAINT**

UPON the motions (the "Motions") of J. Ezra Merkin ("Merkin"); Gabriel Capital Corporation ("GCC"); Bart M. Schwartz, Receiver for Ariel Fund Limited ("Ariel"), Gabriel Capital, L.P. ("Gabriel"); Ralph Dawson, Receiver for Ascot Partners, L.P. ("Ascot"); and Ascot Fund Ltd. ("Ascot Fund") (collectively, the "Defendants") to dismiss the third amended complaint of Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS"), after due deliberation this Court, having rendered its decision in writing on August 12, 2014 [ECF No. 212], finds as follows:

WHEREAS on December 11, 2008 (the "Filing Date"), the Securities Investor Protection Corporation filed an application made pursuant to the Securities Investor Protection Act of 1970,

15 U.S.C. §§ 78aaa, et seq., with the United States District Court which appointed Irving Picard as trustee and the case was thereupon removed to this Court; and,

WHEREAS on or about May 7, 2009, the Trustee commenced the instant adversary proceeding against the Defendants other than Ascot Fund; and,

WHEREAS on or about August 30, 2013, the Trustee filed the Third Amended Complaint [ECF No. 151]; and,

WHEREAS the Third Amended Complaint added Ascot Fund as a Defendant; and,

WHEREAS on or about October 11, 2013, Defendants Ariel, Gabriel, Ascot, Merkin and GCC each moved to dismiss the Third Amended Complaint [ECF Nos. 160, 165, 168]; and,

WHEREAS on or about November 15, 2013, the Trustee filed one consolidated opposition to these Defendants' motion to dismiss [ECF No. 173], to which these Defendants replied on or about December 20, 2013 [ECF Nos. 185, 187, 188]; and,

WHEREAS on or about December 20, 2013, defendant Ascot Fund filed a motion to dismiss the Third Amended Complaint and to sever [ECF No. 182]; and,

WHEREAS on or about January 31, 2014, the Trustee opposed Ascot Fund's motion to dismiss and to sever [ECF No. 198], to which Ascot Fund replied on or about February 28, 2014 [ECF No. 206]; and,

WHEREAS on or about April 30, 2014, the Court held a hearing on the Defendants' motions to dismiss; and,

WHEREAS, during the April 30th hearing, the Court denied Ascot Fund's motion to sever from the bench; and,

WHEREAS, by Memorandum Decision dated August 12, 2014, the Court granted in part and denied in part the Defendants' Motions and directed the parties to submit a proposed Settled Order [ECF No. 212];

In light of the foregoing findings, it is hereby **ORDERED that:**

1. The Defendants' Motions are granted to the extent that Counts One, Three, Four, Five, Six, Seven, Eight, Eleven, and Twelve of the Third Amended Complaint are dismissed with prejudice in their entirety;

2. The Defendants' Motions are denied as to Counts Two, Nine, Ten, and Thirteen of the Third Amended Complaint for the reasons stated in the Court's Memorandum Decision;

3. As to Count Two of the Third Amended Complaint, the Defendants' Motions are granted to the extent that all claims related to any actual or constructive fraudulent transfers that occurred prior to two years of the Filing Date are dismissed;

4. As to Count Nine of the Third Amended Complaint, the Defendants' Motions are granted to the extent that all claims related to any subsequent transfers that occurred prior to two years of the Filing Date or are based on initial transfers that occurred more than two years prior to the Filing Date are dismissed;

5. Defendants must file their answers to the Third Amended Complaint within twenty (20) days from the date this Order; and

6. Defendants must (i) to the extent not already completed by the parties, comply with FED. R. CIV. P. 26(f); and (ii) schedule a conference with the Court no later than sixty (60) days from the date of this Order.

Dated: New York, New York
_____, 2014

ENTER:

THE HONORABLE STUART BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE